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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

*The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.*

## NEW GENERAL CORPORATION LAWS

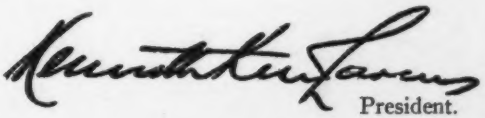
**Idaho.** Chapter 262, Idaho Laws of 1929, enacts "The Business Corporation Act" codifying the law relating to business corporations, effective sixty days after adjournment of the legislature, that is, sixty days after March 7, or May 6, 1929.

**Indiana.** Chapter 215, Indiana Laws of 1929, known as "The Indiana General Corporation Act," and being "An Act concerning domestic and foreign corporations for profit, providing penalties for the violation thereof, and repealing all laws or parts of laws in conflict herewith," becomes effective July 1, 1929.

## CORPORATION INCOME TAXES

**Arkansas** now imposes a straight income tax on corporations; first return due this year. For brief synopsis of law see page 425, herein.

**Oregon** now provides for an excise tax based on net income; first return due in 1930. For brief synopsis of law see page 427, herein.



President.

# THE CORPORATION JOURNAL

*Edited by John H. Sears of the New York Bar*

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost ($2) and thereafter, before mailing, each copy will be punched to fit the binder.

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# The Era of Common Stock

The usual discussion of loans on Wall Street and encouragement of stock speculation appears to take for granted that the amount of funds thus used is taken from the financing of industry. How about the impetus thus afforded to new financing—especially the flotation of common stock? So marked is the use of common stocks to retire funded debts and as the "kick" in the form of stock purchase warrants or for conversion in the offering of preferred stock that to-day may be called "the day of the common stock"—the dawn of a new era in corporate finance. Analysis shows that the new issues offered on the New York market in 1926 indicated a ratio of about 27 per cent of common stocks. In 1927 it was 26 per cent, but in 1928 it went to 48.4 per cent. In the last four months it has run up to nearly 70 per cent.

The *New York Times* (March 9, 1929) gives the following tabulation comparing amounts of bond, note, and stock offerings in the New York market.

| | |
|---|---|
| 1926: | |
| Bonds | $3,374,558,000 |
| Notes | 711,567,000 |
| Stocks | 1,600,228,000 |
| Total | $5,686,353,000 |
| 1927: | |
| Bonds | $5,033,662,000 |
| Notes | 630,236,000 |
| Stocks | 2,166,742,000 |
| Total | $7,830,640,000 |
| 1928: | |
| Bonds | $3,913,545,000 |
| Notes | 467,283,000 |
| Stocks | 4,003,052,000 |
| Total | $8,383,880,000 |

The increase in stock issues by the month in 1929 is very marked. Stocks can be sold at par or better, but loans in the form of bonds or notes demand exhorbitant interest charges. The security purchasing public are also being educated, so as to prefer the possibility and hope of larger profits that go with common stock ownership.

# Domestic Corporations

**Alberta.**

**Action brought by minority stockholders.** The Alberta Supreme Court says here (it is not essential to go into the merits): "It is, of course, now treated as an elementary principle that cases in which the minority can maintain what is sometimes called a class or representative action are confined to those cases in which the acts complained of are of a fraudulent character or beyond the powers of the company, it being necessary in all other cases for the company itself to bring the action. If, however, the acts complained of are either fraudulent or ultra vires one of the minority shareholders may maintain an action on his own behalf and on behalf of other shareholders in his class if the other circumstances or elements necessary to give this right—with which it will be necessary for me later to deal—are present. * * * It is, no doubt, clear law that where the wrongdoing is such that it may be confirmed by the majority of the shareholders, a class action can only be maintained where it is alleged and proved that the wrongdoers themselves hold or, at least, control the majority of the shares and will not permit an action to be brought in the name of the company." Bryant & Dingman, et al. [1929], D. L. R. 862. W. G. Egbert, for plaintiff. C. J. Ford, K. C., for defendants.

**California.**

**Blue Sky Law.** In the digest of Imperial Live Stock & Mortgage Co. vs. Tracy, 272 P. 600 in The Journal for March, 1929, page 366, it is stated that the Blue Sky Law of California provides that no subscription is valid and may be enforced unless 25 per cent thereof has been paid in in cash. The law carries no such provision. The intention was to say that such was one of the conditions under which the permit was issued by the Commissioner in the instant case, pursuant to the provisions of the Blue Sky Law vesting power in him to prescribe terms and conditions, in his discretion.

**Rights of innocent purchaser of stock certificates acquired by vendor through fraud.** Induced by fraudulent representations the owner of certain certificates of stock signed the assignments and powers of attorney on the backs thereof and intrusted the certificates to the "confidence men." The certificates were subsequently sold by a broker, both the broker and the purchaser being unaware of any irregularity. On presentation of the certificates to the corporation, the transfer was prevented by a restraining order issued in this action which is for the return of the certificates to the original owner. The court below found for the plaintiff but the Supreme Court of California reverses saying that the statutory rule as to which one of two innocent parties must suffer by the act of a third, and the rule relating to estoppel when the owner clothes another with the indicia of ownership, must be applied here. The opinion is a long one, covers fully the various collateral ques-

tions incident to such a transaction, and is replete with citations. Powers vs. Pacific Diesel Engine Co. et al., 274 P. 512. William Klein, Arthur H. Barendt, and Redman & Alexander, all of San Francisco, for appellants. Boswell F. King and H. M. Anthony, both of San Francisco (Leo R. Friedman, of San Francisco, of counsel), for respondent. Heller, Ehrman, White & McAuliffe, of San Francisco, for San Francisco Stock Exchange, amici curiae. Sloss & Ackerman, of San Francisco, for Pacific Coast Association New York Exchange Firms, amici curiae.

**Canada.**

**A new edition of "Company Law of Canada."** A new edition (Third Edition, 1929) of Masten and Fraser's Company Law of Canada is now available. Since the second edition (1920) there has been important legislation affecting Canadian Companies all of which is reflected in the new edition of this authoritative work. Because of the widened scope of the new edition there has resulted an increase of over 300 pages of new material. The authors are Cornelius Arthur Masten, LL.D., one of the judges of the Appellate Division of the Supreme Court of Ontario, and William Kaspar Fraser, K. C., author of Canadian Company Forms and Handbook of Companies. The book is published by The Carswell Company, Ltd., Toronto, Ont., Canada. The price is $18.

**Delaware.**

**Transaction of business at stockholders meeting by less than a quorum, a quorum having been present on its organization.** A by-law of the Delaware corporation here involved provides that "the holders of record of the majority of shares of the capital stock of the corporation issued and outstanding having voting power present in person or by proxy, shall, except as otherwise provided by law, constitute a quorum at all meetings of stockholders. At an annual meeting of the stockholders, properly called, at which directors were to be elected, a majority of the shares was present. The meeting was organized by naming a secretary, and some formal matters were attended to. Discovering that they would be outvoted in the election of directors certain stockholders then withdrew from the meeting leaving present in person or by proxy less than a majority of the shares. The meeting then proceeded to elect directors. The validity of the election is questioned, for lack of a quorum. The Delaware Court of Chancery, New Castle County, sustains the election, saying that, under the by-law, a quorum having once been present, and the meeting having been organized and its legality not having been questioned, business may be transacted with full force and effect by less than a quorum when the lack of a quorum is caused by the withdrawal of stockholders from the meeting for no justifiable reason (the reason, here, being that by withdrawing "they hoped to defeat the will of the majority"). Hexter vs. Columbia Baking Co. et al. (not yet officially reported). James I. Boyce and James H. Hughes, Jr., of the firm of Ward and Gray, and with them Francis M. Bangs and Elwood M. Rabenold, of the New York Bar, for the

complainant. Robert H. Richards, and with him Austin V. Wood, of the West Virginia Bar, for the defendants, Columbia Baking Company, Edward S. Romaine, John E. Williams, and George A. Parsons. William S. Potter, for the defendants, George A. Zabriskie, Milton J. Baker, and Harry Tipton.

**Enjoining use of conflicting corporate name.** Drugs Consolidated, Inc., a Delaware corporation, sought to restrain Drug Incorporated, a Delaware corporation, from using its corporate name as in derogation of the rights of the complainant in enjoyment of its own name. The Court of Chancery of Delaware, denies preliminary injunction, saying that the names are reasonably distinguishable and "only a careless person would be confused by them." In the course of the opinion it is brought out that the defendant contended that as the complainant has not as yet actually engaged in the business for which it was incorporated it has no trade susceptible of being injured and hence the relief sought should be denied. The court answers that it is not necessary to enter on a discussion of this contention since the Delaware corporation act provides (Sec. 5; § 1919 of the Code) that the chosen name "should be such as to distinguish it from any other corporation engaged in the same business, or promoting or carrying on the same objects or purposes in this state" (Sec. 5 now reads "shall be such as to distinguish it upon the records in the office of the Secretary of State from the names of other corporations organized under the laws of this State"); and continues: "It certainly cannot be the intention of the act to require a corporation created under it to become engaged in its corporate business in a material and physical sense, as a prerequisite to the undisturbed enjoyment of the protection to its corporate name which the statute affords." The right to protection arises "as soon as the corporate existence is brought into being." Drugs Consolidated, Inc., vs. Drug Incorporated, 144. Atl. 656. Harry K. Hoch, of Wilmington, and George E. Edelin, of Washington, D. C., for complainant. William G. Mahaffy, of Wilmington, and Edward S. Rogers, of Chicago, Ill., for defendant.

**Federal.**

**Seizure and sale of automobile transporting intoxicating liquors; rights of innocent lien holder.** See at Texas, page 419, post.

**Indiana.**

**Noncumulative preferential dividends on preferred stock defined.** The certificate of incorporation of the Wabash Railway Company, an Indiana corporation, provides: "The five per cent. profit sharing preferred stock A shall be entitled to receive preferential dividends in each fiscal year up to the amount of five per cent. before dividends shall be paid upon any other stock of this corporation, but such dividends on the five per cent. profit sharing preferred A stock shall be noncumulative." For many years no dividends were paid on the preferred stock A except two quarterly dividends of 1 per cent. each; then dividends were

paid on the 5 per cent. basis. During the years when no dividends or dividends of less than 5 per cent. were paid on the preferred stock A there were net earnings in a large amount available for payment of preferred stock A dividends but such was carried to surplus and used for additional working capital. A 5 per cent. dividend was paid in 1927 on preferred stock B, and the company "now threatens to pay regular dividends upon its preferred stock B and its common stock without first making good and paying out of the surplus full preferential dividends of 5 per cent. in each fiscal year upon stock A from the time of its organization to the extent that such preferential dividends were earned in each fiscal year, but were not paid in full." This the United States Circuit Court of Appeals, Second Circuit, holds it may not do, reversing the decree below for the defendant company, as "noncumulative" means merely that the net earnings of one year may not be used for the payment of dividends for a previous year to the extent that the net earnings of such previous year were insufficient to meet the specified dividend requirements, and so that when net earnings of any previous year were in excess of the amount used for the payment of the preferential dividend for such previous year, even though plowed back as working capital, the preferential dividend for each previous year to the extent of the net earnings for such year must be paid before the payment of dividends on common stock or on inferior preferred stock. Judge Hand dissents. Barclay et al. vs. Wabash Ry. Co. et al., 30 F. (2d) 260. Wm. R. Begg, of New York, and Joseph S. Clark and Ellis Ames Ballard, both of Philadelphia (Hornblower, Miller & Garrison, of New York, and Clark, Clark, McCarthy & Wagner and Ballard, Spahr, Andrews & Ingersoll, all of Philadelphia, of counsel), for appellants. Charles E. Hughes, Winslow S. Pierce, and F. C. Nicodemus, Jr., all of New York, for respondent Wabash Ry. Co. Charles E. Hughes, of New York, for respondents Hollins, Austin, Leslie, and Krapp. Davis, Wagner & Heater, of New York (Arnold L. Davis, of New York, of counsel), for respondent Dickson.

**New Jersey.**

**Nonresident stockholder's liability to assessment on his stock.** In an action for an assessment, brought, here, by the receiver by original bill in aid of the insolvency administration the Court of Chancery of New Jersey says: "As to stockholders resident in another state, it has been specifically determined in this state that a stockholder is so far an integral part of the corporation that, in the view of the law, he is to that extent privy to the proceedings; and, when in such a suit an assessment on stock has been ordered by the court to meet corporate liabilities, he cannot question the propriety of the assessment in an action at law subsequently brought against him to enforce assessment either in this or in another jurisdiction." Bryson vs. Conlen, et al., 144 A. 723. Joseph H. Carr, of Camden, for complainant. Lewis Starr, of Camden, for defendants.

**New York.**

**Stock transferred on forged assignment; owner's rights.** A cer-

tificate of stock of a Virginia corporation standing in the name of a married woman and kept by her, in a place known to herself and her husband only, in the apartment in New York occupied by the couple, was taken by the husband sometime prior to May 31, 1922, at which time the husband disappeared. Shortly thereafter the disappearance of the certificate was discovered, a note from the husband admitting the taking being found in lieu thereof. On complaint to the police the wife was told that as a husband cannot steal from his wife she had no case. Nothing further was done until 1928 when on being advised that she was entitled to the stock the wife communicated with the New York transfer agent of the corporation which advised her that the stock had been transferred to the husband in 1922 on the strength of a power of attorney purporting to bear the wife's signature. Since then the stock has passed into the hands of innocent third parties. Action was brought against the company and a brokerage house (the latter assuming whatever liability might be found) for the stock or for money damages, and an accounting for dividends. The New York Supreme Court, Special Term, Part VI, finds for the plaintiff, but as to issue stock would result in an overissue a money judgment is rendered, including interest from the approximate date of conversion ("deemed to compensate her for any dividends"). The court says: "There is no question that the transfer of plaintiff's certificate of stock was made on a forged signature and without plaintiff's knowledge or consent, and in view of all the circumstances plaintiff was not guilty of laches." Giffon vs. American Safety Razor Company, et al., New York Law Journal, April 9, 1929, page 161.

**On the right to demand payment for their shares with the incidental appraisal thereof on the part of stockholders dissenting to a reorganization.** By amendment to the corporation's certificate of incorporation the original first and second preferred stock was retired, being exchangeable for new preferred stock of a single class. Certain objecting holders of the old second preferred stock asked for an appraisal of their shares and payment therefor (Section 38, subdivision 12, of the New York Stock Corporation Law). The New York Supreme Court, Appellate Division, Third Department, in a three to two decision, denied the motion for an appraisal saying that "the intent of the Legislature was that the alteration must be one that infringes upon preferential rights of his stock to his prejudice," and concluding "that no preferential right belonging to the old preferred stock has been altered." The case was covered by a digest in The Journal for October, 1928, p. 250 (229 N. Y. S. 735; 224 App. Div. 268). The New York Court of Appeals in a four to three decision, reverses. The court says that "viewing the right as separate from value, it may be either beneficially or disadvantageously changed. Whenever it is changed in either way, it is altered, and when the change is effected by the amended certificate, a preferential right is altered by that certificate. * * * When, as matter of law, the conclusion cannot be avoided that the alteration has produced advantages to the outstanding shares, the holder might not become entitled to purely theoretical and technical

relief. When, however, the result of the alteration is not entirely clear, the wishes of the stockholder rather than the conception of the courts should prevail. * * * Here a serious question arises whether appellants are benefited by the change. The majority stockholders think they are, but these appellants take a different view." Re Silberkraus et al., appellants; Schaffer Stores Company, Inc., respondent: 250 N. Y. 242. Harry M. Schaffer, of Schenectady, for respondent. Naylon, Maynard, Bates & Smith, of Schenectady (Chatfield T. Bates, of counsel), for appellants.

**Ohio.**

**Corporation may not question validity (under Blue Sky Law) of stock issue after reaping benefit thereof over long period.** The substance of the decision here, so far as present purposes are concerned, is that a corporation is estopped from questioning the legality of certain stock issued by it because (so it alleges) it failed to comply with the provisions of the Ohio Blue Sky Law, after it has reaped the benefit of the stock issue over a long period of time. The Court of Appeals of Ohio, Cuyahoga County, renders a decree for the defendant stockholder, reversing the judgment of the court below which ordered the return and cancellation of the shares of stock in question. Cleveland Printing Ink Co. vs. Phipps, 164 N. E. 641. Squire, Sanders & Dempsey, of Cleveland, for plaintiff. Roscoe M. Ewing, of Cleveland, for defendant.

**Texas.**

**Seizure and sale of automobile transporting intoxicating liquor; rights of innocent lien holder.** Two cases involving the rights of finance companies as lienor-assignees of chattel mortgages or conditional sales contracts covering automobiles sold on the installment plan, which automobiles have been seized on account of the illegal transportation of intoxicating liquor. In the Federal case (National Prohibition Act), where the financing company, as intervener, sought to recover the seized car, the United States District Court, District of Kansas, 1st Division, holds that the holder of such paper is a "lienor" rather than an "owner," that as to the provision that "the lienor" is to be protected only if the lien is bona fide and was created without knowledge by the lienor that the car was being used or was to be used for the illegal transportation of liquor, the "creating" of the lien is at the time of the sale, and that, in the instant case, as the vendor (the original lienor) had notice of the use to which the car was to be put the conditions are not met and the assignee, though innocent, is to be denied relief. In the state case (Texas Revised Statutes, Art. 5112) the Supreme Court of Texas (Commission of Appeals, Section A), on petition in intervention of a financing company, admittedly innocent, in an action looking to the sale of a confiscated car as a "public nuisance," holds that the assignee-mortgagee is entitled to intervene. The prayer here was for "recovery of the car or judgment against the proceeds in the amount of its debt." The court says: "We perceive no ground for doubting propriety of the intervention. But for the intervention the sale ordered would be

subject to the lien. With the mortgagee in court in this way, complete title passed at the sale, but the proceeds became subject to the mortgagee's claim." U. S. vs. Humberd, 30 F. (2d) 413. Leo Erskine Wyman, Asst. U. S. Atty., of Topeka, Kas. Gamble, Browne & Allen, of Kansas City, Mo., for intervener. General Motors Acceptance Corporation vs. State, 12 S. W. (2d) 968. Slough & Gibson, of Amarillo, for appellant. J. S. Stallings, of Claude, and S. E. Fish, of Amarillo, for the State. Underwood, Strickland & Thomerson, of Amarillo, as amicus curiae.

**Wisconsin.**

**On the right to inspect corporation's books by a stockholder through an agent.** The right of a stockholder to examine the books of the corporation is not questioned; the right under the Wisconsin Statute is absolute. "The sole question raised here is the right of a stockholder to have the inspection made by a properly qualified agent who acts solely for him and in his behalf." The Supreme Court of Wisconsin after stating that "No doubt the right is personal in that the stockholder cannot transfer it to another for any ulterior or improper purpose," seems to hold that in any case the stockholder's right to examine the books of the corporation may be exercised through an agent if such agent is acting solely in the interest of and for the benefit of the stockholder. Mandelker vs. Mandelker, 222 N. W. 786. Edgar L. Wood, of Milwaukee, for appellant. Churchill, Bennett & Churchill, of Milwaukee, for respondent.

# Foreign Corporations

**California.**

**Foreign corporation having paid license tax under statute subsequently declared to be unconstitutional may sue state to recover the amount thereof.** In The Journal for January, 1929, page 323, there appeared a digest of the decision of the District Court of Appeal, First District, Division 1, California, in Welsbach Co. vs. State et al., 270 P. 690, in which the court held contrary to the statement in the above caption, on the ground that as the state allows itself to be sued on "claims on contract or for negligence" only, and as in connection with the refund of taxes illegally collected there is at most no more than an implied contract, action against the state in such a case will not lie. The California Supreme Court reverses the judgment to the extent of the action against the state (the Secretary of State and the State Treasurer, in their official capacities, were made parties defendant) holding that an implied contract is involved and that an action against the state may be maintained on such contract—and "without first having presented the claim for allowance or disallowance to the board of control." The court further holds that the Secretary of State and the State Treasurer are not suable in their official capacities for the recovery of such monies. In Whyte vs. Jordan, decided the same day,

77 California Decisions 371 (Willard P. Smith; Gaylord & Smith, for appellant. U. S. Webb, Atty. Gen.; Frank L. Guerena, Dep. Atty. Gen.), the court holds that the Secretary of State may not be sued in his individual capacity for the amount of such illegally collected taxes if the funds collected by him have been paid by him into the state treasury before the institution of the action, particularly as a complete remedy is afforded in the form of an action brought directly against the state as established in the Welsbach case. Welsbach Company vs. The State et al., 77 California Decisions 373. A. A. Sanderson, for appellant. U. S. Webb, Atty.-Gen.; Frank L. Guerena, Deputy Atty.-Gen., for respondent. Gaylord & Smith and David Livingston, amici curiae in behalf of appellant.

**New York.**

**On service of process.** The orders of the New York Supreme Court, Appellate Division, First Department, in Compania Mexicana Refinadora Island, S. A., vs. Compania Metropolitana de Oleoductos, S. A., et al. (223 App. Div. 346, 228 N. Y. S. 36), digested in The Journal for July, 1928, at page 232, are affirmed by the New York Court of Appeals, 250 N. Y. 203, 164 N. E. 907.

**On "doing business" by a foreign corporation in receivership.** This is an action against the Central Vermont Ry. Co., a Vermont corporation, in receivership at the time suit was brought by the New York ancillary administrator of the estate of a deceased resident of Vermont on account of his death resulting from injuries received in Vermont due to the alleged negligence of the railway. The receivers were appointed a few weeks after the decedent's death. Prior to the receivership and at the time of the accident the railroad was admittedly doing business in New York. Service was on a director of the defendent railway residing in New York. The Supreme Court of New York, Appellate Division, in a three to two decision, answered in the affirmative the question: Has the Supreme Court jurisdiction of defendant and the subject matter of the action? (231 N. Y. Sup. 630; The CORPORATION JOURNAL for March, 1929, page 375.) On appeal, the New York Court of Appeals reverses, unanimously, holding that jurisdiction was not acquired since there was no valid service. "At the time of the service the defendant, though not dissolved, was not acting as a corporation within the limits of this state. The director who received the summons did not represent it in this state in any of its corporate functions, nor was he here in that behalf. * * * Here the situation was the same as if the company had withdrawn from the state or transferred the business to another." Florida Gaboury vs. Central Vt. Ry. Co., 165 N. E. 275; 250 N. Y. 233. Paxton Blair, of New York City and Charles G. Fryer, of Schenectady, for appellant. Walter A. Fullerton, and Edward W. Barrett, both of Saratoga Springs, for respondent.

**Oklahoma.**

**Limitation on service of process by publication.** The Supreme Court of Oklahoma says: "Section 250, Compiled Oklahoma Statutes

1921, provides in what instances service by publication may be had on corporations, among them being where a foreign corporation has property in the state or debts owing to it or 'wherein the plaintiff upon diligent inquiry, is unable to ascertain whether a corporation, domestic or foreign, named as defendant, continues to have legal existence or not, or has officers or not, or their names and whereabouts, and if dissolved, is unable to ascertain the names or whereabouts of the successors, trustees or assigns, if any, of such corporation.' Under the said provisions it was necessary for the plaintiff to set out in the affidavit for publication facts which would specifically justify service by publication on the defendant corporation, and, having failed to do so, therefore, the trial court erred in refusing to quash that part of the service by publication which referred to M. S. Grant & Co., a corporation." Jones et al., vs. Illinois Valley Trust Co. et al., 274 P., 36. J. E. Whitehead, of Dallas, Texas, and J. H. Hays, of Marietta, for plaintiffs in error. Keller & Cameron, of Marietta, and McQueen & Kidd, of Oklahoma City, for defendants in error.

**Pennsylvania.**

**Action against officers, as individuals, of corporation that has neglected to appoint Secretary of Commonwealth as statutory agent will not lie.** The Pennsylvania law provides that a foreign corporation before doing business in the state shall appoint, in writing, the Secretary of the Commonwealth its agent for service of process; but that failure on the part of a corporation to so appoint shall not impair the validity of any contract with the corporation and that actions may be maintained on such a contract except that the corporation itself may not maintain an action thereon until it has complied. Here the action was against the officers, as individuals, of a foreign corporation that had neglected to name the Secretary as its agent, for failure on the part of the corporation to carry out a contract to which it was a party and which had been entered into with it as a corporation. The Supreme Court of Pennsylvania, affirms the judgment below for the defendant officers, saying that as under the law a non-complying corporation has, nevertheless, a quasi legal status, though it may not bring suit until it has complied, and as the plaintiff here had knowledge of the corporate existence of the corporation and contracted with it as such, "the officers who acted for it and in its name are not individually liable for a breach of its contract. The mere fact that the agents might be punished for neglecting to register would not render them liable for the contracts of the corporation." Bala Corporation vs. McGlinn et al. 144 A. 823. Lewis M. Stevens (of Stradley, Ronon & Stevens), of Philadelphia, for appellant. Owen J. Roberts, Francis F. Burch, and Frank H. Warner, all of Philadelphia, for appellees.

**Texas.**

**On what constitutes doing business.** Action is by a corporation, foreign to Texas, with its home office in New York, against a Texas corporation for breach of contract. As one defense it was urged that

the plaintiff was a foreign corporation transacting and soliciting business in Texas without a permit and so was not entitled to prosecute the suit in the Texas courts. Plaintiff has a number of manufacturing plants, all outside of Texas. From time to time it buys through Texas brokers cotton-seed oil for shipment to one or more of its plants; on occasion it sells through Texas brokers some of the oil purchased. Judgment below for plaintiff is affirmed by the Court of Civil Appeals of Texas, which says: "Plaintiff did not maintain any office in Texas, neither did it have any agent in Texas. The oil it purchased or sold was through general brokers, who had no authority to bind it. All the contracts made by the brokers in Texas were subject to approval by the corporation at its home office. We do not think this constituted intrastate business on the part of Southern Company. Clearly, the transaction involved in this litigation [a contract of purchase] does not constitute intrastate business. It seems to be the settled holdings of our courts that a foreign corporation which buys or sells commodities in Texas through a broker for interstate shipment is not thereby transacting such business within the state as to require it to obtain a permit to do business in Texas before it can enforce a contract so made." Italy Cotton Oil Co. vs. Southern Cotton Oil Co., 13 S. W. (2d) 438. Wear, Stollenwerck & Wear and Frazier & Averitte, all of Hillsboro, for appellant. J. L. Gammon, of Waxahachie, and Baker, Botts, Parker & Garwood, of Houston, for appellee.

# Taxation

**Arkansas.**

**Straight income tax on corporations.** Domestic and foreign corporations are now subject to an Arkansas income tax. The law is based on and is quite similar to the Federal income tax law. The taxable income of a foreign corporation is the income derived from sources within the state determined much as taxable income of foreign corporations is ascertained under the Federal law. The rate is 2 per cent. There is an exemption of $1,500, apportioned in the case of a foreign corporation whose income is derived from sources both within and without the state. The tax is for the calendar or fiscal year. Returns are due regularly on or before May 15 covering the income of the preceding calendar or fiscal year. The return to be filed in 1929 covering the income of the calendar year 1928 or a fiscal year ended in 1928 is due on or before August 15, 1929. The tax for 1928 in the case of a corporation making return on a fiscal year basis is for so much only of the fiscal year income as is apportioned to 1928. One half of tax is due at time fixed for filing return; second half due within six months thereafter. The law is administered by the Commissioner of Revenues.

**Canada.**

**Basis of sales tax in the case of manufacturing company selling to affiliated distributing company at special intercompany prices.**

In the instant case a manufacturing and distributing company organized a separate corporation to do the manufacturing restricting its own activities to the distributing. The manufactured product was sold by the manufacturing company to the distributing company at a fixed price which in all cases was much less than the wholesale price charged to jobbers or wholesalers by the distributing company and in some cases showed an actual loss. The company contended that the manufacturer's sales tax should be based on the actual sales price by the manufacturing company to the distributing company. The Government contended that because of the relationship between the two companies, including the selling price agreement, the sales tax should be based on the prices at which the manufactured products were sold by the distributing company to jobbers and wholesalers. The Ontario Supreme Court sustains the Government's contention, considering the distributing company as the selling agent, merely, of the manufacturing company. A.-G. Can. vs. Coleman Products Co., (1929) 1 D. L. R. 658. J. A. Urquhart, K. C., for the Crown. G. R. Munnoch, for defendant.

**Indiana.**

**An attempt to enforce, within the State of New York, the revenue laws of Indiana.** In The Journal for February, 1929, page 354, we made brief mention of the decision of the United States District Court, Southern District of New York (28 F. (2d) 997) in this cause, in which the court said, "I do not conceive it to be the duty of this court, notwithstanding the weight of insistence to the contrary, to undertake the enforcement, within the state of New York, of the revenue laws of Indiana." The United States Circuit Court of Appeals, Second Circuit, has affirmed the judgment. Moore, Treasurer of Grant County, Ind. vs. Mitchell et al., 30 F. (2d) 600. Russell H. Robbins, of New York City (Henry M. Dowling, of Indianapolis, of counsel), for appellant. Simpson, Thacher & Bartlett, of New York City (Louis Connick and W. N. Seymour, both of New York City, of counsel), for appellees.

**Basis of fee on increase of capital (change from par value to non-par value stock), a large amount of the stock being unissued.** The Indiana statutes provide that on an increase of capital of a domestic corporation there shall be paid a tax equivalent to one tenth of one per centum of the increase, if over $10,000. For purposes of the tax no par value stock is to be considered as having a value of $10 per share. The corporation here involved had a capitalization of $3,000,000 (120,000 shares, of the par value of $25). 92,173 shares had been issued and were outstanding. The articles of incorporation were amended to provide for 500,000 shares of no par value stock. An exchange, share for share, was to be made for the outstanding $25 par value stock. The company contended that the proper fee covering the increase ($3,000,000 to $5,000,000) was $2,000. The state contended that as the number of authorized and unissued no par value shares was 407,827, representing unissued capital stock in the amount of $4,078,270, and as

before the increase the unissued authorized capital was 27,827 shares, of the par value of $25 each, or $695,675, this latter amount should be deducted from $4,078,270, leaving $3,382,595 as the actual increased value of the capital, the fee on which would be $3,382.59. The Appellate Court of Indiana does not concur in this contention and affirms the judgment below for the plaintiff company saying: "The amount of the fee to be paid is controlled by the amount of authorized capital, and not on the amount of unissued stock." Schortemeier, Secretary of State vs. Auburn Automobile Co., 164 N. E. 717. Arthur L. Gilliom, Atty.-Gen., Edward M. White, Asst. Atty.-Gen., and Dale F. Stansbury, of Williamsport, for appellant. Walker & Hollett and T. C. Batchelor, all of Indianapolis, for appellee.

**Michigan.**

**Situs of intangible property of a Michigan corporation is in Michigan for franchise tax purposes.** The annual franchise tax based on paid-up capital and surplus is involved. Surplus means the value of the corporation's property less its outstanding indebtedness and paid-up capital. Property located outside of Michigan is to be excluded in the determination of the net amount of capital and surplus forming the basis of the tax. The state has heretofore been sustained by the Supreme Court of Michigan in its contention that intangible personal property of a Michigan corporation has its situs in Michigan for the purposes of the tax. In the instant case wherein both the State and Federal constitutions are invoked the court says: "But as counsel has approached the Federal question [relying on the 14th Amendment—equal protection] at least, from a somewhat different angle, we should again consider that question. It is true that following the common law rule [mobilia sequuntor personam] results in the consideration of intangibles of Michigan corporations in making the computation and their rejection when held by foreign corporations. But both computations are made in accordance with the same rule of law, with the adoption of the same legal fiction, if we should call it such. The fact that the adoption of such rule requires the Michigan corporations to pay a much higher rate to this state under our statutes than the Pantlind Company is required to pay to Delaware, the state of its domicile, and the Dodge Company to Maryland, the state of its domicile, both of which states levy but a fraction of what is here levied, does not render the act invalid." In Re Truscon Steel Company (March 29, 1929), not yet officially reported.

**Oregon.**

**Corporation excise tax based on net income.** Chapter 427, Oregon Laws of 1929 (subject to referendum), provides for the imposition of an excise tax on domestic and foreign corporations doing business in the state, for the privilege of carrying on business, based on the net income of the preceding calendar or fiscal year. The rate is 5 per cent. First return due on or before March 31, 1930, covering income of the calendar year 1929, or of a fiscal year ended in 1929. Offset

against the tax of an amount not exceeding 90 per cent of taxes paid on personal property within the state. Minimum tax, $25. If gross income is derived from business done both within and without the state the determination of the net income, subject to tax, is to be based on the business done within the state, under regulations prescribed by the State Tax Commission. Net income is determined much as under the Federal income tax law. The tax is payable in two equal instalments: first half on or before March 31; second half on or before September 30. The present capital stock tax or license tax continues.

### Facsimile Signatures on Stock Certificates.

States the laws of which specifically authorize the use of facsimile signatures of corporation officials, and of corporate seals when required, on stock certificates signed by a transfer agent or transfer clerk and by a registrar are Delaware, New Jersey, New York, Massachusetts (on and after June 9, 1929), Maine (effective 90 days after the legislature adjourns), Indiana (on and after July 1, 1929), and Idaho (on and after May 6, 1929). By statute just enacted the Maryland General Assembly affirmatively recognizes as proper the use *in any event* of facsimile signatures and seal (effective June 1, 1929).

### Delaware Corporations Organized.

650 corporations were organized under the laws of Delaware from March 21 to April 20, as against 586 for the preceding 30-day period, and 516 for the corresponding period of one year ago.

## Some Important Matters for May and June

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. The *State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ARIZONA—Report to corporation commission and registration fee due during June.—Domestic and foreign corporations.

CALIFORNIA—Franchise (income) tax return and payment of one-half of tax due on or before May 15, 1929.—Domestic and foreign corporations.

DELAWARE—Annual franchise tax due between April 1 and July 1.—Domestic corporations.

DOMINION OF CANADA—Annual summary due between April 1 and June 1.—Domestic companies having capital stock.

FLORIDA—Annual list of officers and directors due on or before June 1.—Domestic and foreign corporations.

ILLINOIS—Annual license fee or franchise tax due on or before July 1 but may be paid up to July 31 without penalty.—Domestic and foreign corporations.

INDIANA—Annual report due within 30 days after June 30.—Domestic and foreign corporations.

IOWA—Annual report due between the first day of July and the first day of August.—Domestic and foreign corporations.

Additional statement due at the time of making the annual report in July.—Foreign corporations.

MAINE—Annual tax return due on or before June 1.—Domestic corporations.

MISSISSIPPI—Annual report due on or before June 30.—Domestic and foreign corporations.

MISSOURI—Annual franchise tax due on or before May 15.—Domestic and foreign corporations.

Income tax due on or before June 1.—Domestic and foreign corporations.

MONTANA—Annual report within two months from April 1.—Foreign corporations.

Annual license tax based on net income due between June 1 and June 15.—Domestic and foreign corporations.

NEBRASKA—Annual report and fee due on or before July 1.—Domestic corporations.

NEVADA—Annual list of officers due on or before July 1.—Domestic and foreign corporations.

NEW JERSEY—Annual tax return due on or before first Tuesday of May. —Domestic corporations.

NEW YORK—Annual return of net income on or before July 1.—Domestic and foreign business corporations.

NORTH CAROLINA—Capital stock report to determine amount of franchise tax due between May 1 and July 1.—Domestic and foreign corporations.

OREGON—Annual statement due during June.—Domestic and foreign corporations.

RHODE ISLAND—Corporate excess tax due on or before first day of July.—Domestic and foreign corporations.

TENNESSEE—Annual report and franchise tax due on or before July 1.—Domestic and foreign corporations.

UNITED STATES—Second installment income tax due June 15.—Domestic corporations and foreign corporations having an office or place of business in the United states.

VIRGINIA—Income tax due on or before June 1.—Domestic and foreign corporations.

WASHINGTON—License fee due on or before July 1.—Domestic and foreign corporations.

WEST VIRGINIA—Tax statements due on or before July 1.—Domestic corporations.

Annual license tax due on or before July 1—Domestic and foreign corporations.

Fee to state auditor as attorney in fact due on or before July 1.—Foreign and non-resident domestic corporations.

WYOMING—Annual sworn statement and license tax due on or before July 1.—Domestic and foreign corporations.

# The Corporation Trust Company's Supplementary Literature

*In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:*

**What Constitutes Doing Business.** (Revised to July, 1928). A pamphlet containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

**Analysis of Delaware Amendments of 1929.** In this especially prepared pamphlet the full text of all provisions, both of the corporation law and the franchise tax law, which were changed by the amendments of 1929 is so presented as to show (1) the law as it stood before amendment; (2) matter repealed; (3) new matter. Then, immediately following each section changed, is a short, clear explanation of the reason for and effect of the change.

**The New Decedent Estate Law of New York.** The full text of the law as completely revised by the legislature of 1929, is given in this pamphlet.

**Safeguarding Stock Transfers.** Dealing with the many pitfalls in transferring stock on a corporation's books.

**Delaware Corporations.** Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation. Revised to November, 1928.

**Special Reports.** When cases are decided that seem to be of some particular interest or significance in connection with the matter of doing business by foreign corporations, The Corporation Trust Company sometimes issues one of these special reports. One on the Southwest Company case is now available.

**Transfer Requirements Chart.** This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.